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ABSTRACT

To assist in upcoming deliberations on the reauthorization of the Individuals with Disabilities Education Act (IDEA), the Center on Education Policy asked three outstanding experts in special education to write papers advising on whether and how IDEA should be changed. The resulting papers in this publication include: IDEA 2002 Reauthorization; An Opportunity To Improve Educational Results for Students with Disabilities (Thomas Hehir); IDEA Reauthorization: Its Time To Simplify and Focus on Performance (Lawrence C. Gloeckler); and Issues for Consideration in the Reauthorization of Part B of the Individuals with Disabilities Education Act (Margaret J. McLaughlin). The three authors agree on the large issues facing special education and they propose some common solutions. The common problems they have identified are the following three: (1) the need for students with disabilities to improve academically; (2) the need for less paperwork and a less complex system to retain special education teachers; and (3) the need for increased funding for IDEA and for funding provided within general education to support a range of services for children who are having difficulty in school, so that fewer children will need to be referred to special education. Each paper includes references. (CR)

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A TIMELY IDEA

RETHINKING

Federal Education Programs *for* Children with Disabilities

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CONTENTS

INTRODUCTION

Jack Jennings 1

IDEA 2002 Reauthorization: An Opportunity to Improve Educational Results for Students with Disabilities, *Thomas Hehir*

Summary 4

Paper 5

IDEA Reauthorization: It's Time to Simplify and Focus on Performance, *Lawrence C. Gloeckler*

Summary 14

Paper 15

Issues for Consideration in the Reauthorization of Part B of the Individuals with Disabilities Education Act, *Margaret J. McLaughlin*

Summary 24

Paper 27

About the Authors

Thomas Hehir 43

Lawrence C. Gloeckler 44

Margaret J. McLaughlin 45

INTRODUCTION

JACK JENNINGS
DIRECTOR, CENTER ON EDUCATION POLICY

Today, a child with a disability is expected to attend the local public school and to finish high school with a diploma and perhaps go onto college. Further, children with disabilities are mostly taught in regular classrooms while they are in school. These events are now so commonplace that we do not realize how different they are from the past.

Over the last 25 years, a major achievement in American education has been the expansion of schooling to include all children with disabilities. Not only are children with physical, mental, and other disabilities attending school in record numbers, but they are also progressing farther in schooling than ever before. Moreover, students with disabilities are going on to institutions of higher education in record numbers and then finding employment. (Specific data about these and other accomplishments can be found in the publication of the Center on Education Policy and the American Youth Policy Forum, entitled *Twenty-five Years of Progress in Educating Children with Disabilities: The Good News and the Work Ahead.)*

The country should take pride in these accomplishments, which have provided an opportunity for a good and productive life to so many children. Although difficult to achieve, it shows what we can do when we set our minds to it.

The main federal statute promoting these developments is the Individuals with Disabilities Education Act (IDEA). In 2002, the Bush Administration and the Congress will consider the renewal and revision of this law. The upcoming debate about IDEA is very important because this law guarantees children with disabilities the right to a free appropriate public education. This rights-based approach makes IDEA unique among federal education laws.

To assist in the upcoming deliberations, the Center on Education Policy asked three outstanding experts in special education to write papers advising on whether and how IDEA should be changed. Tom Hehir served as the director of the Office of Special Education Programs in the U.S. Department of Education. Lawrence Gloeckler is the longtime director of special education for New York State. Margaret McLaughlin heads a noted center on special education at the University of Maryland. (More extensive biographies can be found at the end of this volume.)

Not only are children with physical, mental, and other disabilities attending school in record numbers, but they are also progressing farther in schooling than ever before.

Each of these three experts is strongly committed to the education of children with disabilities, and each can draw on decades of experience in offering advice. At one level, their papers show different attitudes about the desirability of changing the Individuals with Disabilities Education Act and the extent of such changes. Hehir would generally prefer to wait for full implementation of the amendments to that Act adopted in 1997, since those changes address some of the problems being discussed today. Gloeckler urges faster action to address the difficulties he sees in the system he

administers in New York. McLaughlin argues for a fundamental rethinking of the premises of special education and, by extension, for basic changes in the federal statute.

At another level, though, the three authors agree on the large issues facing special education, and they propose some common solutions. In a way, their main dis-agreement is about the urgency with which they believe these issues must be addressed. The common problems they have identified are the following three:

1. ACADEMIC IMPROVEMENT. Now that the doors of the schoolhouse have been opened for children with disabilities, the logical next question is whether these children are receiving an education that will prepare them for further education and job training after high school. All three authors agree that children with disabilities are not currently receiving the education they will need to succeed in life and that the law should clearly state the need for these children to succeed academically. Hehir contends that the 1997 reauthorization set the right direction by incorporating academic goals into the individualized education program (IEP), the mandatory document that spells out the individualized services to be provided to each child with a disability. Gloeckler shows impatience with the low levels of academic achievement among children with disabilities as a group, especially those in the central cities. He also raises the question of how to help those children with disabilities who have progressed in school but have not attained the high levels of academic achievement now being demanded of students seeking a high school diploma. McLaughlin proposes that the concept of a "free appropriate public education" ought to be defined in terms of a child's progress toward a set of district or state standards.

Now that the doors of the schoolhouse have been opened for children with disabilities, the logical next question is whether these children are receiving an education that will prepare them for further education and job training after high school.

2. PAPERWORK AND COMPLEXITY. A nearly universal complaint is that the IDEA leads to too much paperwork and that teachers and other staff are leaving special education due to the complexities of the IEP and the federal law's due process procedures. Hehir argues that the 1997 reauthorization will eventually lead to less paperwork. Gloeckler asserts that, for whatever reason, such good intentions have not produced the desired results and that much greater urgency must be directed to simplifying the system. McLaughlin argues for a fundamental simplifying of the system by adopting one of two options: either to limit special education to students whose disabilities are verified reliably and irrefutably, or to limit special education to children with clearly defined developmental disabilities and to those who do not succeed in the regular system after intensive interventions.

3. FUNDING. A much-debated issue is the cost of implementing the services and procedures for children with disabilities that are required by the IDEA. A particular concern is the gap between the current federal contribution of about 17% of the extra costs of educating children with disabilities, and the commitment in the IDEA that the federal government would eventually pay for 40% of these costs. The authors understand the need for increased funding for IDEA. Hehir suggests that if full funding is not achievable at present, then the more immediate objective should be to provide targeted full funding for children with significant disabilities. All three writers also agree that funding should be provided within general education to support a range of services for children who are having difficulty in school, so that fewer children will need to be referred to special education. In other words, the choice should not be an "all or

nothing" one, whereby children must either be referred to special education to receive additional services or be left without the extra services they need to succeed in school.

In summary, the three common themes of these papers are a greater emphasis on academic achievement for children with disabilities, a reduction in paperwork and complexity, and better funding of IDEA and other support services for children who are lagging behind in general education. The authors refer to other problems, such as the over-identification of minority children for special education, the need for incentives to attract teachers to the field, better coordination of services provided by different state and local agencies, and the unique discipline rules applying to children in special education. The authors also propose some useful solutions to these dilemmas. These papers are well worth reading.

The Center on Education Policy thanks these three outstanding individuals for their contributions. They have provided much useful thinking to help guide policymakers in the task of improving the IDEA, and we are very indebted to them. All three have devoted their professional lives to the education of children with disabilities, and that dedication shows through their papers contained in this volume.

We also would like to thank our funders for making this publication possible, especially the Joyce Foundation and its officers, Warren Chapman and Peter Mich. Warren Chapman has shown an especially keen interest in promoting a better education for disabled children.

SUMMARY OF PAPER BY THOMAS HEHIR

PRINCIPLES THAT SHOULD GUIDE THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA):

(1) As much as possible, this reauthorization of IDEA should focus on reinforcing existing law and should avoid statutory changes. Though some changes will be necessary to implement the recommendations contained in this paper, major changes should not be made at this time in the basic Part B program (the state grants program that specifies the requirements of the Act), as it relates to student programs and parent rights. The 1997 reauthorization made some major changes to Part B that went into effect when the regulations were promulgated in 1999. Therefore, these changes have just begun to take effect. Major changes at this time would be confusing for the field and would place an undue burden upon parents.

(2) School systems and states need greater assistance in implementing the Act. Therefore, the program improvement and other national activities supported through Part D of IDEA should be enhanced.

(3) Qualified teachers are central to implementing the IDEA. The federal government has a role in addressing these issues.

(4) The increased emphasis on outcomes for students that began in 1997 should be reinforced.

PART B (GRANTS TO STATES PROGRAM):

(1) Restructure the grants to states to achieve specific goals while significantly increasing funds to states.

(2) Revise the discipline provisions by incorporating principles of universal design.

(3) Reduce paperwork.

(4) Enhance OSEP's monitoring by moving toward a results-oriented system based on currently available data.

PART D (SUPPORT PROGRAMS):

(1) Fund Part D as a percentage set-aside of the Part B program.

(2) Provide loan forgiveness for special education and related services personnel.

(3) Focus the teacher-training program on the adoption of "state of the art" practices in the preparation of both regular and special education personnel.

(4) Reinforce a strong federal role in supporting programs to train "low incidence" personnel.

(5) Expand Parent Training Centers.

IDEA 2002 REAUTHORIZATION:

An Opportunity to Improve Educational Results for Students with Disabilities

THOMAS HEHIR

CONTEXT

The upcoming reauthorization of the Individuals with Disabilities Education Act (IDEA) provides an unusual opportunity to improve educational results for students with disabilities. President Bush has appointed a distinguished panel to review the nation's special education law, demonstrating the commitment of the White House to leave no child behind. Both parties in Congress have been seeking ways to increase federal funding for special education, attempting to meet the statutory goal of the federal government financing 40% of the excess costs of educating children with disabilities. The attention IDEA is receiving in Washington is unprecedented.

In states and local school districts, increasing attention is being paid to educational results. Most states have implemented some form of standards-based reform. Increasingly, states are measuring educational results, reporting them publicly, and intervening in schools where results are unsatisfactory. Spurred by changes made to IDEA in 1997 (referred to hereafter as IDEA 97), states are including students with disabilities in their testing programs. Concerted efforts by states and local school districts are showing some impressive improvements. For instance, in New York State, prior to IDEA 97, very few students with disabilities took the Regents Exams. In 1997 only 4,419 took the Regents in English, with 3,414 passing. In 2000, 13,528 students with disabilities took the exam, with 9,514 passing. More than twice as many students passed the exam in 2000 than took it in 1997 (New York State Education Department, 2001). These results demonstrate both the wisdom and promise of the changes promoted in IDEA 97 that require the inclusion of students with disabilities in educational accountability systems.

Another favorable contextual factor supporting this unprecedented opportunity to improve educational results for students with disabilities is the fact that the law underwent a major reauthorization in 1997, with new regulations promulgated in 1999. These changes moved the law from a procedural emphasis to a results orientation. Further, the support programs funded under IDEA that provide research, technical assistance, parent training, technology development, and professional preparation were consolidated from 13 statutorily-directed, fragmented programs to five powerful flexible authorities covering all ages and disabling conditions. Prior to this change, only certain disabilities were covered and certain age levels. The consolidation and strengthening of the support programs under IDEA provide powerful vehicles by which the Administration and Congress can address implementation issues.

The attention IDEA is receiving in Washington is unprecedented.

Though there are favorable conditions for improving educational results for students with disabilities, major problems persist. Notwithstanding impressive improvements in the achievement levels

of students with disabilities in some places, much improvement is needed. In Massachusetts, where students must pass a high-level content test to graduate from high school, a majority of students with disabilities failed the test (Greenberger, 2001). The performance of students with disabilities in Massachusetts does not differ significantly from that of students in other states with high-level tests, including New York. Unless their performance improves dramatically, large numbers of students with disabilities will not graduate. Further, if students do not believe they have a reasonable prospect of graduating, they are more likely to drop out. This could further exacerbate the already high level of special education dropouts, which is twice that of their non-disabled peers (Heubert & Hauser, 1999; Wagner et al., 1993). The solution to this problem of low performance does not lie in going back to the days of low expectations, but rather with making a concerted commitment to improve educational results for students with disabilities through better implementation of IDEA. The federal government has a strong role to play here.

The solution to this problem of low performance does not lie in going back to the days of low expectations, but rather with making a concerted commitment to improve educational results for students with disabilities through better implementation of IDEA.

One of the reasons students with disabilities are not performing better is that they have not had sufficient access to the general education curriculum. A Massachusetts parent of a child with disabilities who had failed the test addressed this issue by asking, "Did Tom (her son) receive the frameworks curriculum anytime before last year? The answer is no. . . . Did most of the special education kids receive it? No, not the vast majority." (Greenberger, 2001). This lack of access is a violation of the law and speaks to the enormous variability in the implementation of the law. Though some variability in implementation should be expected and is indeed desirable, many states and school districts are in significant noncompliance with the law. The National Council on Disability (NCD) conducted a major study of the federal monitoring system of IDEA and found that federal monitoring was weak and less than effective. Though NCD found that the Clinton Administration, of which I was an appointee, had conducted more enforcement than all its predecessors, I can attest to the weakness of federal efforts in this area. For instance, in one action in which we designated Pennsylvania a "conditional grantee" due to persistent failure on the part of the state department of education to enforce IDEA, both Senators and two Congressmen wrote a letter to then-Secretary of Education Richard Riley in protest. This reauthorization provides an opportunity to reinforce the federal role in implementing and enforcing IDEA (National Council on Disability, 1996).

Another problem, related to the first, is the persistent misuse of special education as it pertains to minority students. Minorities, particularly African Americans, are disproportionately placed in special education (Harvard Civil Rights Project, in press). Though some over-representation should be expected due to the well-documented connection between disability and poverty, the placement of African Americans in special education exceeds that which would be predicted by poverty alone (Hehir & Gamm, 1999). Further, once identified, African Americans are more apt to be placed in segregated programs (U.S. Department of Education, 1996). Though this issue is persistent, the solution is not statutory but rather involves federal enforcement, coupled with greater efforts on the part of general education to assist students who are struggling with behavior and reading in the early grades. IDEA 97 addressed this issue directly by requiring the states to report racial placement data and to act on inappropriate placements on the part of school districts. Again, federal enforcement is important here.

The implementation of IDEA is dependent upon a well-trained workforce. School districts and states report increasing problems hiring special education and related services personnel (U.S. Department of Education, 1996; personal communication with large city directors). An additional concern is the fact that large numbers of general education personnel have not received relevant training on educating students with disabilities mainstreamed into their classrooms. Further, research suggests that many special educators leave the profession after relatively few years (Coleman, 2000). Numerous reasons account for leaving the profession, but one of the most frequently cited is the reaction against the large amount of paperwork required of special educators. This reauthorization provides an opportunity to address these important workforce issues.

Another persistent issue that received a good deal of attention in the last reauthorization was student discipline. The current discipline provisions have caused much controversy in the field and need to be addressed in this reauthorization. School administrators complain that the establishment of the right to continuing education services for students with disabilities who are expelled from school creates a "double standard," in that such a right is not granted in federal law to the non-disabled. Further, the actual regulations in this area are exceedingly complex and difficult for school people to comprehend. Advocates complain that vague concepts, such as whether a series of short-term suspensions constitutes a pattern of functional exclusion, mean that some disabled kids can be out of school for many days in a school year. Being suspended frequently or expelled is associated with poor educational outcomes, particularly for students with disabilities (Wagner et al., 1993). Given the importance of school districts being able to maintain discipline, and the need for all students to receive an effective education, this issue should be addressed in this reauthorization.

A frequently overlooked factor in promoting improved educational results is the role of parents. Studies have shown that high levels of parent involvement are associated with better school outcomes for students with disabilities. This is true for all disabilities, all races, and all economic levels (Wagner et al., 1993). However, it is often difficult for parents to assume an active role in their children's education. As one parent recently said, "He didn't come with a manual." Parents of students with disabilities must learn about their child's disability, its impact on the child's education, and effective practices. Further, they must learn how to navigate a complex law. Parent Training and Information Centers (PTIs) have served an important role in educating parents. However, due to low funding levels, they have reached only a small portion of the parents. A particular concern has been outreach to minority and poor communities. IDEA 97 provided for the establishment of Community Parent Resource Centers that focus on the needs of underserved populations. These centers serve such diverse groups as Southeast Asian immigrants, various Native American communities, and residents of South Central Los Angeles. Though these projects are promising, they have just begun to meet the need. This reauthorization is an opportunity to affirm and strengthen the role of parents.

A frequently overlooked factor in promoting improved educational results is the role of parents. Studies have shown that high levels of parent involvement are associated with better school outcomes for students with disabilities.

Finally, the failure of the federal government to provide sufficient funds for special education has meant that school districts have borne the brunt of the costs. And cost increases have outpaced inflation, as more and more students have been served and as the number of high-cost, severely disabled students has increased. The lack of federal funding and the increasing costs borne by school districts almost guarantee conflicts with parents over services. Parents of children with extensive needs frequently end up seeking

legal remedies in order to obtain the services their children need. This dynamic, coupled with recent federal surpluses, creates tremendous political momentum for a greater federal funding commitment.

PROPOSED DIRECTIONS FOR IDEA 2002

The following recommendations are based on: (1) my review of relevant research; (2) my participation in a recent hearing in the U.S. House of Representatives about the over-placement of minority students in special education; (3) a review of various documents of the National Association of State Directors of Special Education (NASDSE); and (4) my six years as Director of the U.S. Department of Education's Office of Special Education Programs (OSEP).

Principles

The following principles undergird this proposal:

(1) As much as possible, this reauthorization should focus on reinforcing existing law and should avoid statutory changes. Though some changes will be necessary to implement the recommendations contained here, major changes should not be made at this time in the basic Part B program (the state grants program that specifies the requirements of the Act), as it relates to student programs and parent rights. The 1997 reauthorization made some major changes to Part B that went into effect when the regulations were promulgated in 1999. Therefore, these changes have just begun to take effect. Major changes at this time would be confusing for the field and would place an undue burden upon parents.

(2) School systems and states need greater assistance in implementing the Act. Therefore, the program improvement and other national activities supported through Part D of IDEA should be enhanced.

(3) Qualified teachers are central to implementing the IDEA. The federal government has a role in addressing these issues.

(4) The increased emphasis on outcomes for students that began in 1997 should be reinforced.

SPECIFIC PROPOSALS

Reinforce the Emphasis on Results in the Part B, Grants to States Program.

(1) Restructure the grants to states to achieve specific goals while significantly increasing funds to states.

The issue of increasing federal support to IDEA has been growing in Congress, as school districts and parents seek a greater funding role for Washington. Currently the federal government is funding only about 12% of the excess costs of educating students with disabilities. Some view this as an unfunded mandate. Though it is not technically an unfunded mandate, because IDEA is a voluntary state grant program, the perception is strong. Advocates for greater levels of federal funding also use the original commitment in the law of up to 40% of excess costs to reinforce the notion that the federal government has been derelict in its responsibilities to fund the program.

Although momentum exists to increase funding toward the promised 40%, the reality of federal funding priorities makes this a daunting goal. The amount of money that would be required approaches $20 billion. The Administration and many members of Congress have therefore not made a commitment to reach this level of funding. Further, some members of Congress express reluctance to greatly increase funding, due to concerns over the program. In a recent hearing about the placement of large numbers of students from minority backgrounds in special education, one member expressed his reluctance, stating, "This is

good money chasing bad." A way to support increased appropriations while not subsidizing questionable practices might be to target increases for specific purposes.

One approach to targeting would be to subsidize school districts for the costs of educating students with significant disabilities, a subset of those served under the Act. Depending on how you define them, these children have significant disabilities that are usually medically based and have needs that are several times more costly to address than the educational needs of non-disabled students. For purposes of this paper, I would define this group as students with low-incidence disabilities—those that occur in less than one half of one percent of the population (such as moderate to severe mental retardation, blindness, deafness, etc.). Combined, these children represent approximately 20% of the students served under the Act, or approximately 2% of the total student population. Further, these conditions exist in relatively constant numbers across populations, with a slightly higher incidence in high-poverty populations. Congress could target increases to subsidize the education of these students, using a census and poverty-weighted formula. An advantage of this approach is that it targets money where it is most needed, and it targets money on a population whose eligibility for services is beyond dispute.

Another potential target for additional funds would be early intervention efforts to prevent reading and behavioral difficulties in children. Research has consistently shown that providing intervention to students who experience early problems in learning to read or in behaving appropriately in school can reduce the numbers of students requiring special education. Further, the current practice of late intervention, typically in fourth or fifth grade, for students with learning or behavioral disabilities is less than effective. Targeting the money to research-based approaches in grades kindergarten through three would not only help disabled students but would also help to prevent inappropriate referrals. The White House has advocated this approach, which is described in detail in a paper by Dr. Reid Lyon, adviser to the President, entitled, "Rethinking Learning Disabilities" (2001). It is important to emphasize that these programs should be regular education interventions.

The goal would be a discipline system designed for all students that is capable of appropriately addressing the needs of students with disabilities, some of whom have behavior as a manifestation.

(2) Revise the discipline provisions by incorporating principles of universal design.

The concept of universal design is a useful frame to think about how discipline policies could be better structured for all students. Universal design is a concept that is increasingly used in disability policy. It calls for designing mainstream systems in a way that assumes the participation of people with disabilities. Examples include buildings with ramps, TVs with chips that allow for captioning, reading curriculum that addresses the needs of students with dyslexia. Often, when this is done, improvements benefit the non-disabled as well. People can keep up with the Super Bowl in a noisy bar with the assistance of captioning, and ramps are a boon to people pushing baby carriages. Approaching the issue of school discipline from this perspective, the goal would be a discipline system designed for all students that is capable of appropriately addressing the needs of students with disabilities, some of whom have behavior as a manifestation.

Specifically, federal law should incorporate the principle of prohibiting the cessation of services for all students. Special education law rightly recognizes that expulsions or long-term suspensions without services almost always prevent acceptable progress in school and increase the likelihood that a child will drop out of school (Wagner et al., 1993). The same is likely true for non-disabled children. Therefore, we need to establish this right for all students, particularly if Congress seeks to follow the President's lead in "leaving no child behind."

This will likely require an amendment to the Elementary and Secondary Education Act (ESEA), which covers all children in all states. IDEA has been amended in the past during ESEA reauthorizations. The reverse would be appropriate here.

Consistent with this approach, a clear standard should be established to determine when a series of suspensions would represent functional exclusion and would therefore trigger the requirement for continued educational services. Based on my discussion with local administrators, I would recommend that the standard be 15 cumulative school days within a school year for all children.

Under this framework, the increased protections afforded disabled students should focus on preventing capricious removal of students from existing programs against parental will. Currently the law gives school districts authority to remove children, against their parents' will, who have committed grave offenses such as bringing weapons to school. These stay-put overrides should be maintained. Other disputes about moving students and the appropriateness of placements should be resolved through the due process system.

Under a system universally designed in the manner described above, much of the current regulation in this area could be streamlined and revised in a manner that could be easily understood.

(3) Reduce paperwork.

One of the reasons teachers leave special education is because they feel buried in paperwork. Though it is inappropriate to make substantive revisions to basic protections at this time, some relatively minor changes could greatly relieve the burdens of teachers and administrators. One change would be to focus the individualized education program (IEP) more on access issues and less on lengthy goals and objectives. Eliminating short-term objectives would help here. Also, the law should be clarified to require goals to be specified only in areas where the curriculum is being modified for a student with disabilities or when the IEP is addressing unique needs that arise out of the child's disability, such as the need to learn Braille. In areas where accommodations or supports are needed, the IEP should simply state the nature of these requirements. In addition, the requirement that lengthy rights notices be constantly sent out should be re-examined. These notices are long and highly legalistic, and most parents find them difficult to understand. Giving parents a more simplified version once a year would be a big improvement. Of course, if parents request the more exhaustive document, they should receive it, and all parents should be aware that they could request it.

(4) Enhance OSEP's monitoring by moving toward a results-oriented system based on currently available data.

Though OSEP's responsibility for monitoring IDEA is well established in the law, the traditional role has been relatively weak. The number of federal employees devoted to this function is very small, about 50. Both Congress and previous Administrations have resisted further assertive enforcement. Congress could use this opportunity to reinforce the importance of monitoring and enforcement by increasing the federal workforce devoted to the Act and by encouraging the use of a more outcomes-based, data-driven system, similar to that advocated by NASDSE. OSEP has developed outcome measures for both Parts B and C. These measures could be used to move monitoring significantly forward. Congress could establish data-based standards that could be used to determine the status of a state's eligibility to receive funds under the act. Examples of current data that could be used as a basis for such goals include participation rates in statewide testing, participation of children with disabilities in general education classes, dropout rates, graduation rates, and minority placement rates in special education. Incorporating outcome standards in the legislation could move the nation forward to a more uniform implementation of the Act and away from the current process orientation.

Provide increased support to states, school districts and parents through enhanced support programs under Part D of IDEA.

(1) Fund Part D as a percentage set-aside of the Part B program.

The discretionary programs funded under IDEA are designed to improve implementation of IDEA through research, technical assistance, technology development, teacher preparation, and parent training. Special education is a large enterprise serving a highly diverse population, and Part D is its research and development (R&D) arm. All of these functions take on greater importance within a results-oriented framework. The field needs high quality research and technical assistance to improve educational results for students with disabilities. Examples of research needs include such diverse topics as the best approaches for preparing preschoolers with disabilities to be successful in school, the optimum approach to teaching English to children whose primary language is American Sign Language, the most effective behavioral interventions for students with autism, and the most appropriate uses of communication devices for students who are non-verbal. Given the fact that IDEA covers thirteen disability areas, from birth to early adulthood, the list of unmet research needs is extensive. Also, the need to get research into the hands of teachers, school administrators, and parents is crucial.

With the exception of teacher training, I believe the existing authorization structure is appropriate to support needed activities. However, the appropriation levels are very inadequate. Only about $300 million has been appropriated for all these activities, less than 1% of the annual amount the country spends on special education. The inadequacy of this commitment was brought home to me when OSEP sponsored a research conference at Gallaudet University several years ago. OSEP brought together the top researchers in deafness from across the country to establish a research agenda. The unmet research needs identified by the group exceeded the whole research budget for all of special education. Yet, deaf children represent a small percentage of the students served by IDEA. All of the identified research needs were legitimate, given the very low educational attainment level of large numbers of deaf students; many high school students function at the fourth or fifth grade level. Most will remain unaddressed unless the federal government increases its appropriation. There is no source of significant research support in this area other than the federal government.

> A more aggressive approach would be to allow for loan forgiveness for special education and related services personnel who work a minimum of five years within the field upon completing school.

No major business could prosper with so little devoted to R&D. Given the significant national commitment to special education, it is important that this money be wisely spent on research-validated practices. Unless the federal government invests in R&D, the likelihood that money will be spent inefficiently is great. A way to address this issue would be for Part D to be funded as a percentage of the Part B grant. This could be based on a constant percentage of the 40% federal commitment. I recommend that this level be established as 10% of the federal Part B state grant program. This would yield a 4% commitment of total national effort devoted to R&D. This amount of money would vastly increase knowledge development and utilization, and would allow for a predictable funding source that would enable multi-year planning and commitments. Such an effort could greatly improve educational results for students with disabilities.

(2) Provide loan forgiveness for special education and related services personnel.

In the teacher training area, there is a need to address the increasing shortage of special education and related services personnel. The law is

meaningless without qualified people to implement it. Traditionally, IDEA has addressed personnel shortages through grants to universities, which provide stipends to small numbers of students. This has been inefficient and ineffective. A more aggressive approach would be to allow for loan forgiveness for special education and related services personnel who work a minimum of five years within the field upon completing school. This approach has been successful in the past with other programs. Loan forgiveness would create a powerful incentive to enter the field and could help greatly to reduce shortages.

(3) Focus the teacher-training program on the adoption of "state of the art" practices in the preparation of both regular and special education personnel.

It is not sufficient to simply certify people to teach. The quality of their preparation is important. Educational institutions are experimenting with many models to staff schools during a time of teacher shortages. Some models will work better than others. Ultimately, research can tell us something about the effectiveness of various teacher preparation models. This is a particularly critical issue for special education, where shortages are extreme and the temptation for "quick fix" programs is great. The work of teaching and supporting disabled students is complex; teachers have to know how to bring these students to high levels of achievement. Adding to this complexity is the diversity of the populations served, from low-birth-weight babies to high schoolers with dyslexia who are bound for college.

To support the goal of highly qualified service providers, the teacher training discretionary program should narrow its focus to promote the adoption of state-of-the-art teacher training programs for both regular education and special education personnel. Grants would be given to institutions of higher education to support innovation in both preservice and inservice training. National institutes and research centers should be established to develop and disseminate best practices.

(4) Reinforce a strong federal role in supporting programs to train "low incidence" personnel.

There is a need to reinforce the federal role in preparing teachers to educate students with low-incidence disabilities (disabilities occurring in less than 1% of the population). Most states do not have sufficient demand for these highly specialized staff to justify the establishment of programs. For instance, the need to have teachers who can teach Braille to blind students is very small in relationship to the entire workforce, involving less than one tenth of one percent of students. Small states will need only a few new Braille teachers per year. Though few are needed in any one state, there is a huge national shortage of Braille teachers. This shortage has created large numbers of functionally illiterate blind children. Given the lack of state response, the federal government has an increased responsibility in this area. The federal government should subsidize the development and maintenance of regionally based programs to serve the needs of these populations.

(5) Expand Parent Training Centers.

Parent Training Centers funded under IDEA reach a relatively small number of parents due to lack of funding. Given the positive impact that knowledgeable and involved parents have on promoting better outcomes for students with disabilities, an important strategy for improving results should be expansion of these centers. Particular emphasis should focus on expanding efforts in minority and low-income areas, where parents are least apt to have this training and where the cumulative impact of poverty and disability can have an even greater negative impact on results.

SUMMARY

This reauthorization provides a great opportunity to make major steps forward in expanding educational opportunities for students with disabilities.

IDEA has been a highly successful law that has resulted in much greater access for our nation's children with disabilities. The foundation of educational opportunity built by the IDEA and its amendments over its 25-year existence has vastly improved the lives of millions of children and their families. The educational attainment and employment levels of people with disabilities have dramatically improved (National Council on Disability, 1996; Wagner et al., 1993). In place of the widespread institutionalization and exclusion that were common prior to the law, we now provide children and their families with early intervention and education designed with optimistic assumptions for their future and with an expectation of full community participation. This reauthorization should build on this foundation, while not shirking from the work that is yet to be done. Thus, the focus needs to be on assuring that the promise of the law becomes a reality for all its intended beneficiaries, by utilizing the fundamental structure that already exists, coupled with a renewed commitment to a strong federal role.

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SUMMARY OF PAPER BY LAWRENCE C. GLOECKLER

The IDEA, as reauthorized over the past 25 years, has become an exceedingly complicated law, with recent educationally oriented requirements layered on top of civil rights and procedural requirements. The result is an excessively complex set of requirements—some which have proven essential to ensuring that students with disabilities receive an appropriate education, and some which have distracted human and fiscal resources from the task of educating children. The next reauthorization needs to move this statute in the direction of a streamlined, more focused set of provisions that allow both families and schools to place primary emphasis on educational achievement and developmental growth. Congress needs to target more resources, not necessarily through IDEA, for systemic prevention and early intervention and support services in the general education system. The reauthorization timetable needs to be lengthened to allow more time for implementation of any new requirements. Every incentive should be established to support the recruitment and retention of qualified personnel and creativity and innovation in the instructional process.

PROGRAM RECOMMENDATIONS

The 1997 amendments redirected some of the emphasis in IDEA toward the quality of a student's education. This reauthorization needs to build on that direction, so that states and local districts can continue to explore more effective ways to improve the educational achievement of students with disabilities. Program recommendations highlighted in this paper include:

- Rebuilding general education support systems;
- Placing top priority on the performance of systems and students;
- Strengthening connections among schools and other agencies serving children with disabilities; and
- Enhancing teacher quality and quantity.

TECHNICAL RECOMMENDATIONS

There are still many technical problems with the statute that stem from the complexity of statutory provisions and a reliance on process and procedure for accountability. Technical recommendations highlighted in this paper include:

- Reducing paperwork;
- Focusing on program quality, not process;
- Basing accountability on performance;
- Streamlining discipline without denying students an education; and
- Providing full funding sooner, not later.

In the end, students with disabilities will need to learn the same information contained in the general education curriculum as any other student would. We need to prepare these students not for menial jobs, but for opportunities to participate fully in society and pursue meaningful careers, postsecondary education, and as high a quality of life as possible. We must use this reauthorization opportunity to simplify and restructure the IDEA in such a way that it will facilitate the achievement of these goals for individuals with disabilities rather than reduce the likelihood of successful outcomes.

IDEA REAUTHORIZATION:

It's Time to Simplify and Focus on Performance

LAWRENCE C. GLOECKLER

PREPARING FOR REAUTHORIZATION

As we prepare for the next reauthorization of the Individuals with Disabilities Education Act (IDEA), there continue to be issues that have been difficult for policymakers and educators to fully resolve and that have significant impact on the quality of educational services for students with disabilities. To some extent, the 1997 reauthorization of IDEA magnified these issues, particularly those involving assessment, achievement, and accountability.

One of the dilemmas facing policymakers as the reauthorization approaches is the tendency to believe that the various problems that have persisted with IDEA can be "fixed" by adding new statutory provisions. Congress should be very cautious in this next reauthorization not to over-legislate or further complicate existing provisions, which can result in even more difficulty in implementation. Instead, I believe it is time to simplify a statute that has been made overly, and unnecessarily, complex.

Reauthorizations Are Too Frequent

One ongoing concern is the timeframe for reauthorization, which occurs every five years. Typically, the regulatory process that follows is delayed, so that defining regulations are not available until the second year of implementation. That leaves three years to implement any new provisions. However, the last of those three years is usually a time in which debate about the new reauthorization occurs and opinions are shaped as to the next round of changes. This cycle does not recognize either the complexity of IDEA or the difficulty in moving policy from the federal level to the district level so that effective implementation can occur. The reauthorization cycle should be extended so that whatever statutory improvements are made, the law can be stabilized for a sufficient amount of time to allow for true implementation and accurate evaluation of its effects.

One of the dilemmas facing policymakers as the reauthorization approaches is the tendency to believe that the various problems that have persisted with IDEA can be "fixed" by adding new statutory provisions.

Many Issues Remain

I would place the additional pressing issues in two categories: (1) program issues that have a direct impact on a student's quality of educational opportunity; and (2) technical problems caused by the complexity of statutory and regulatory provisions.

PROGRAM ISSUES

On the program side, the most pressing issues confronting the education of students with disabilities are the following:

- The challenge associated with providing real access for these students to the general education curriculum, including the need to compensate for the gaps in knowledge and skills of many older students who have been denied that access for too long simply because they are "in special education."

- Dilemmas associated with assessing students with disabilities after so many years of accountability

CHART 1 • 2001 ELEMENTARY ENGLISH LANGUAGE ARTS PERFORMANCE LEVELS FOR GENERAL AND SPECIAL EDUCATION STUDENTS

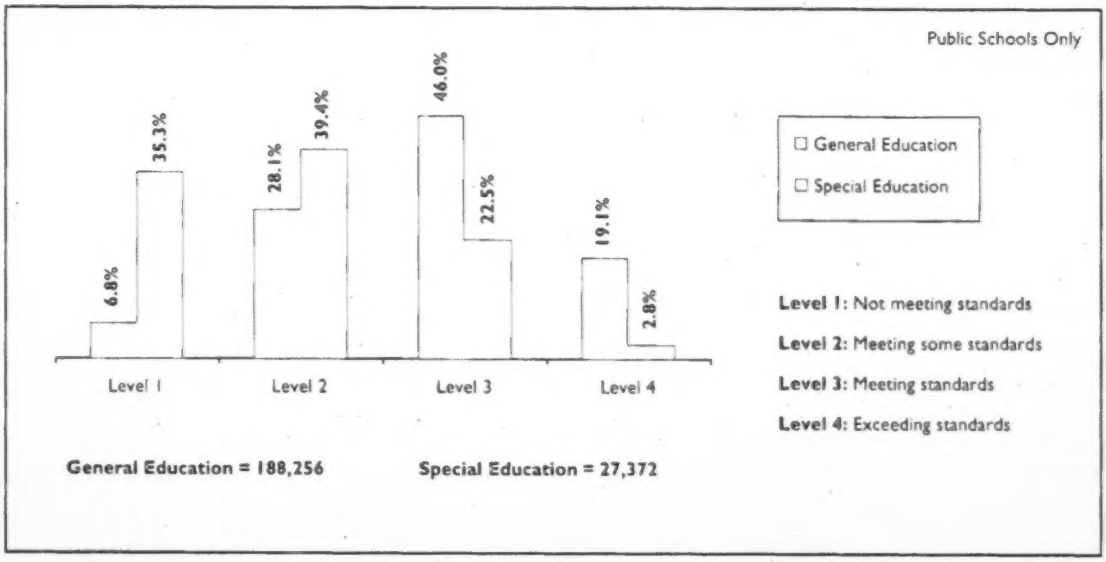


CHART 2 • STUDENTS WITH DISABILITIES GRADE 4 ENGLISH LANGUAGE ARTS TEST RESULTS, 2000

High Need Districts Compared to Average or Low Need Districts

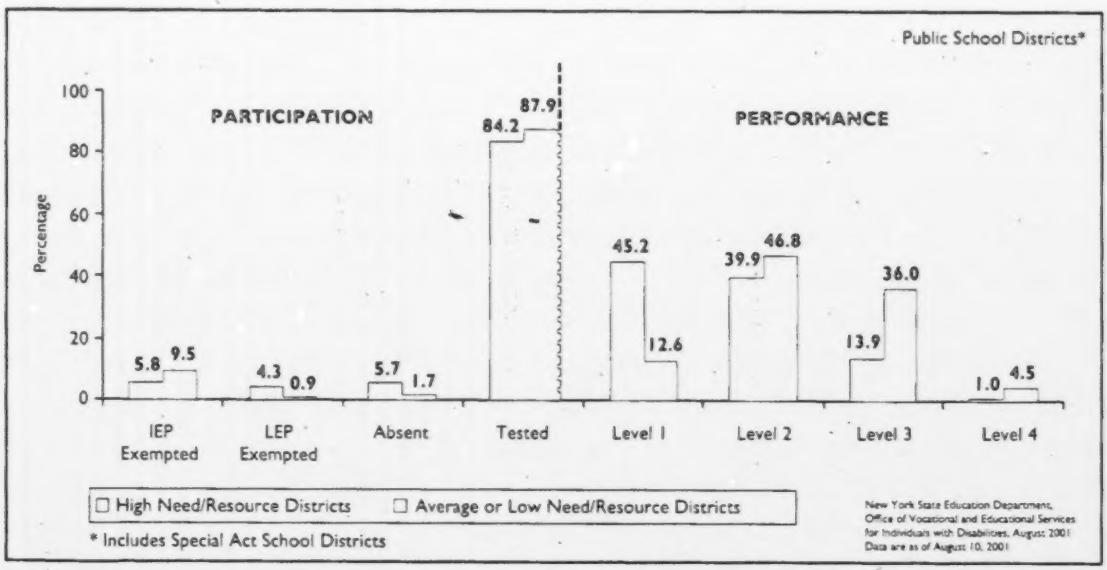


CHART 3 ◦ RACE/ETHNICITY OF SCHOOL-AGE STUDENTS

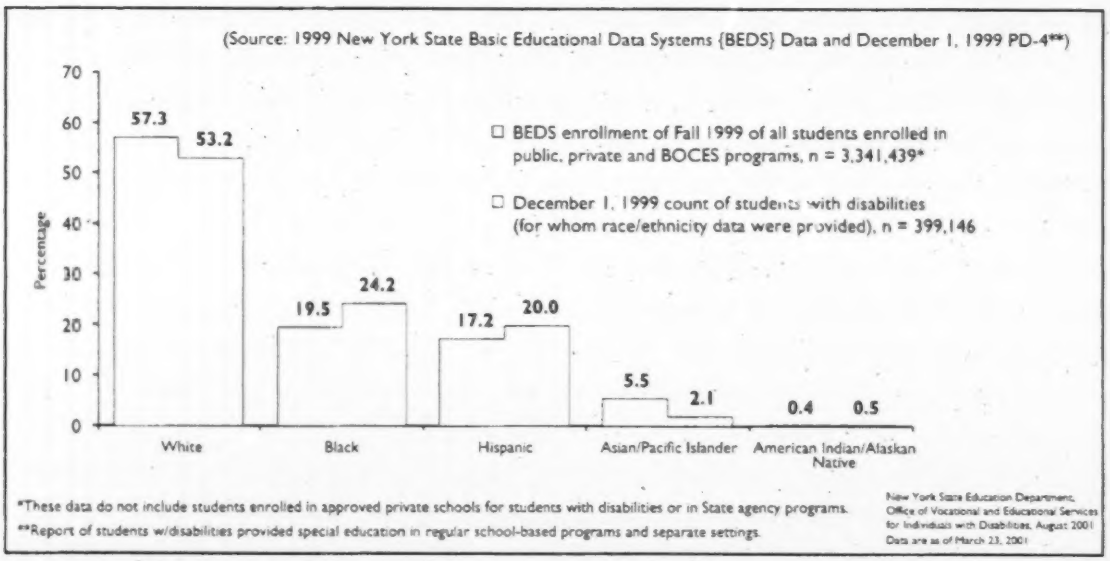
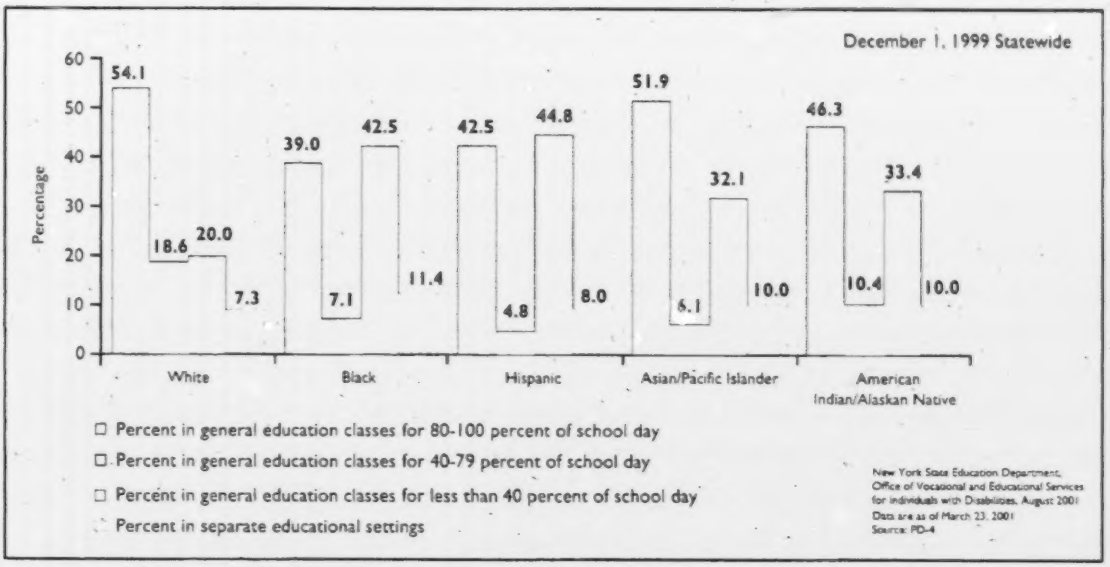

(Source: 1999 New York State Basic Educational Data Systems {BEDS} Data and December 1, 1999 PD-4**)
Percentage
70
60
50
40
30
20
10
0
57.3
53.2
19.5
24.2
17.2
20.0
5.5
2.1
0.4
0.5
White
Black
Hispanic
Asian/Pacific Islander
American Indian/Alaskan Native
☐ BEDS enrollment of Fall 1999 of all students enrolled in public, private and BOCES programs, n = 3,341,439*
☐ December 1, 1999 count of students with disabilities (for whom race/ethnicity data were provided), n = 399,146
*These data do not include students enrolled in approved private schools for students with disabilities or in State agency programs.
**Report of students w/disabilities provided special education in regular school-based programs and separate settings.
New York State Education Department, Office of Vocational and Educational Services for Individuals with Disabilities, August 2001
Data are as of March 23, 2001

CHART 4 ◦ PLACEMENT OF EACH RACIAL/ETHNIC GROUP OF STUDENTS WITH DISABILITIES IN GENERAL EDUCATION CLASSES AND IN SEPARATE EDUCATIONAL SETTINGS (AGE 6-21)



for special education being judged by regulatory process measurements rather than by student achievement.

- The many exacerbating factors that result in tremendous performance gaps between students with disabilities (even those with disabilities that are not intellectually limiting) and other students, especially in urban centers and poorer districts. (See Charts 1 and 2.)
- Continued existence of disparities in the identification (Chart 3) and placement patterns (Chart 4) of minority children.
- Recruitment and retention questions related to how we will obtain and retain the numbers of qualified personnel required to serve our students.
- Continued growth in the percentage of the student population identified as needing special education.

Ask a single parent living in an urban center who struggles daily to put food on the table for her children whether the 10-page due process notice she receives each year is a useful tool for her in the education of her child.

TECHNICAL ISSUES

The technical issues stem from the basic construct of the law and the complicated nature of the special education process it establishes. Inherent in the law is an administrative structure, including due process, which is unique to special education and far more complex and more expensive per child, even before factoring in any costs associated with instruction and support services, than any administrative process in general education.

Process Over Performance

Untold human and fiscal resources have been allotted to attempting to make sure the process established by the law—referral, evaluation, placement, the individualized education program (IEP), and due process arising over disputes about the process—is followed precisely. With federal and state monitoring systems aligned to check the process, school districts have hired administrators to focus on compliance with that process, and a cottage industry of "lawyer/advocates" has grown up to either help the parent challenge the process or help the local district defend it.

The Paperwork Morass

The law was constructed, in good part, by lawyers who are used to relying on paperwork for their practice. However, applying this level of complicated requirements to an education law has proven to be extremely expensive and in many ways irrelevant. The construct of the law has resulted in a situation where families with resources can best take advantage of it and families who are typically out of the loop, either because of lack of resources or lack of involvement in support organizations, do not reap equal benefit.

The Wrong Environment

The environment created by the statutory provisions is often one of intimidation, resulting either in parents being intimidated by the formal structures they must participate in or educators being intimidated by those same structures or by the perceived consequences of failing to accurately implement the statutory provisions.

Examples of persistent problems related to the statutory construct are the current discipline processes and the paperwork burden. The last reauthorization added to the problem. Congress, in attempting to compromise on the issue of discipline during the 1997 amendments, created such a technical morass of rules and procedures that very few implementers understand them and therefore lack confidence in their role in implementation. The amount of paperwork was allegedly reduced in 1997, but in practice it has gotten worse. Ask any teacher, related service provider, or administrator if the paperwork has been reduced. Ask a single parent living in an urban center who strug-

gles daily to put food on the table for her children whether the 10-page due process notice she receives each year is a useful tool for her in the education of her child. Certainly Congress did not intend this to occur, but the 1997 amendments and resulting regulations have in fact created more paperwork, not less.

PROGRAM RECOMMENDATIONS

No matter what changes are made in the statute, certain key program actions have to happen to realize the goal of improved educational results. These actions must include:

- Intervention services for students in early grades to improve their academic performance.
- Development of infrastructures that support children in general education.
- More effective recruitment and training of teachers and leadership personnel.
- High quality curriculum content and proven instructional methodologies that are systemically available for students with disabilities.
- Rethinking of the organizational patterns of schools, how faculty and support staff are used, and the role of other community-based services in supporting the education of students.

There is a mixture of program issues, some of which can be assisted by statutory changes and others of which are best left to implementation strategies. The 1997 amendments redirect some of IDEA's attention to the quality of a student's education. This reauthorization needs to build on that direction, so that states and local districts can continue to explore more effective ways to improve the educational achievement of students with disabilities. States and local districts need to be able to waive requirements that may be barriers to creativity when they are able to show effective and innovative approaches that do improve results.

Rebuild General Education Support Systems

We need to break the wall between general education and special education and view education as a continuum of interventions. There must be significant funding for support services in general education, which will lead to fewer unnecessary referrals and less due process and will increase the proportion of money available for instructional purposes.The current law prohibits interference once a child has been referred to a team of school staff to determine eligibility for special education. A more appropriate construct for today would be a requirement that all children considered for referral are first reviewed by school building teams to encourage the development of supports that make special education referrals unnecessary. Only when it is determined that that is not possible would the referral then be made. This is particularly important in dealing with the issue of overrepresentation of minorities.

Priority One: System and Student Performance

The statute must make it unequivocally clear that students with disabilities must be included in all systems of accountability for student results. We should no longer be debating which children count and which children do not. All children should count in any accountability system. In New York State, for example, students with disabilities are included in all accountability systems. The analysis of achievement data in New York over time shows that children were being excluded from opportunities to succeed because of adult expectations related to their disabilities. The data also shows that when children are given opportunities and support, they succeed at significantly greater levels than when those opportunities are not available. (See Charts 5 and 6.)

The data also shows that there is still a tremendous gap between the achievement of students receiving special education services and those in the general education programs. While some of this gap is easily explainable, we still do not know how narrow or how wide it should be. We only know that

CHART 5 • STUDENTS WITH DISABILITIES
REGENTS EXAMINATION IN ENGLISH

Trends in Number Tested and Number Scoring 55-100 and 65-100

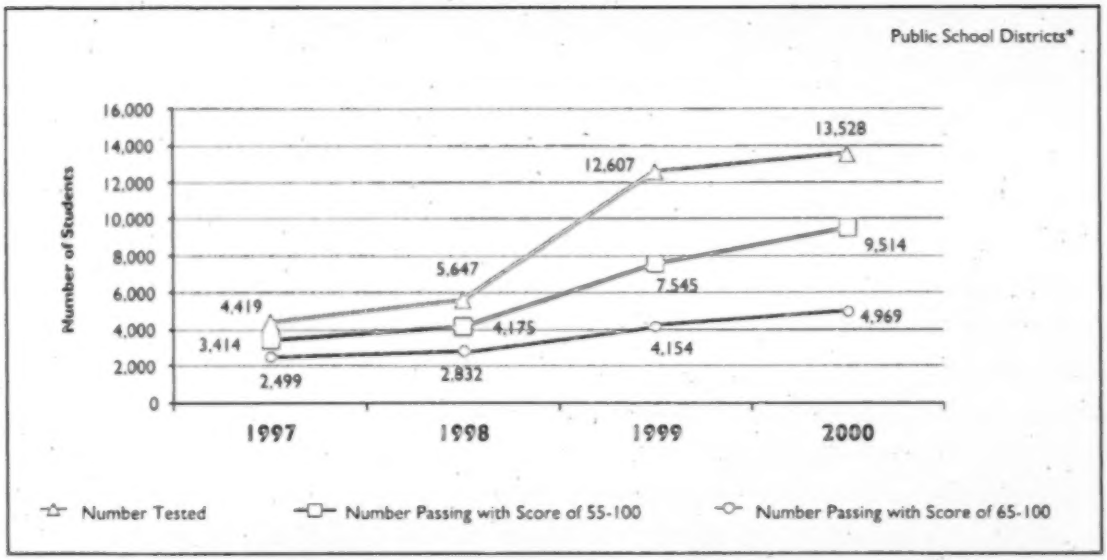
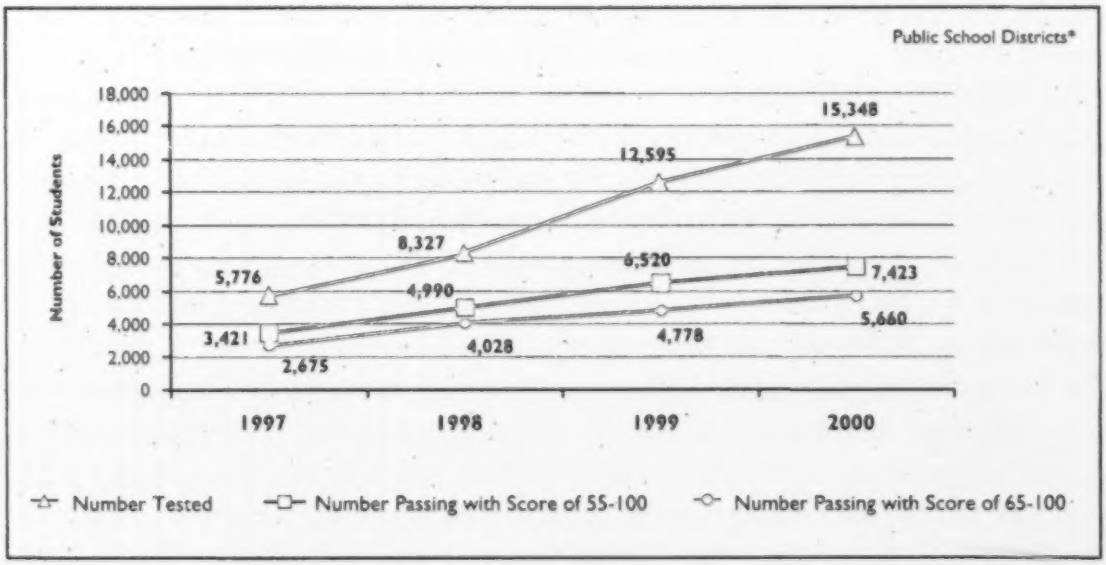


CHART 6 • STUDENTS WITH DISABILITIES
REGENTS EXAMINATION IN MATHEMATICS - COURSE I

Trends in Number Tested and Number Scoring 55-100 and 65-100



it should not be as wide as it has been. However, none of this would have been clear had the students been excluded from accountability systems.

Real School/Agency Connections

A significant body of research shows that when community-based services, such as mental health and health services, are readily available to schools, indicators of students' quality of education improve. The law currently, and unintentionally, inspires disputes among agencies involving funding and program responsibility for children, when we know we should be encouraging program collaboration and pooled funding. Consideration needs to be given to how IDEA funds, as well as funds for other programs that have obligations to young people with disabilities, can be better coordinated so that innovative service delivery models can be constructed around the needs of children and not be inhibited by the needs of auditors.

Teacher Quality and Quantity

In the end, the best indicator that a child will receive a quality education is having a well-trained teacher. No matter how many protections are included in the law or how well constructed an IEP may be, there will be few resulting benefits without a knowledgeable and competent administrator to ensure the provision of those protections and a qualified teacher to implement the IEP. A lot of attention has been paid to the looming special education staff shortages. The age of the teaching force, in conjunction with the burdensome requirements of being a special educator, has led to predictions of tremendous staff shortages in the near future. We must seize the opportunity of this reauthorization to address this issue. There must be creative incentives built into the statute to help attract and train the next generation of personnel and to allow institutions of higher education to expand and strengthen their preservice programs in both general education and special education.

In addition to efforts to facilitate the availability and recruitment of competent administrative, instructional, and related service personnel, much greater attention must be paid to identifying and providing incentives to facilitate the retention of current staff. Each state needs a significant pool of noncompetitive monies at both the state and local district level to provide inservice training and technical assistance for both personnel and families. Unless some of the paperwork and other burdens discussed above can be reduced and additional resources and supports can be provided, we must anticipate increasing rates of staff turnover and the continued movement of our most talented and expert individuals out of the special education service delivery system.

The age of the teaching force, in conjunction with the burdensome requirements of being a special educator, has led to predictions of tremendous staff shortages in the near future. We must seize the opportunity of this reauthorization to address this issue.

TECHNICAL RECOMMENDATIONS

I believe the issues that are more technical need statutory revisions. The discipline procedures, both statutory and regulatory, must be streamlined and made clearer. There is no reason for such a complicated set of requirements. In addition, no children, disabled or non-disabled, should be denied educational services, although the place where the services are provided may have to be altered.

Reducing Paperwork: Just Do It

It is time to stop pretending to reduce paperwork and actually do it. We need to recognize not only that burdensome paperwork requirements create unnecessary costs, but also that they have made special education a far less attractive career. Studies have indicated that individuals are leaving the teaching and related services professions at least in part because they dislike the amount of paperwork they are required to complete. The law should be scrutinized from beginning to end, and any paper-

work requirement that does not add value to the educational process should be removed. Certainly there are many examples of redundancy in notifications and paper trails that could be reduced without affecting any safeguards. The complexity and length of the IEP should also be scrutinized to determine where the content might be simplified, while retaining those elements most critical to ensuring a free appropriate public education for children with disabilities.

Focus on Program Quality, Not Process

In addition, legislative language is needed to provide direction to those conducting due process proceedings. These legislative revisions should make clear that the critical factor in determining which party prevails is the appropriateness and impact of the services recommended and provided to students, not procedural irregularities. The focus on procedural issues has contributed to manipulation of the system to "catch" the other party on minor technicalities without any meaningful effort to solve issues related to program delivery.

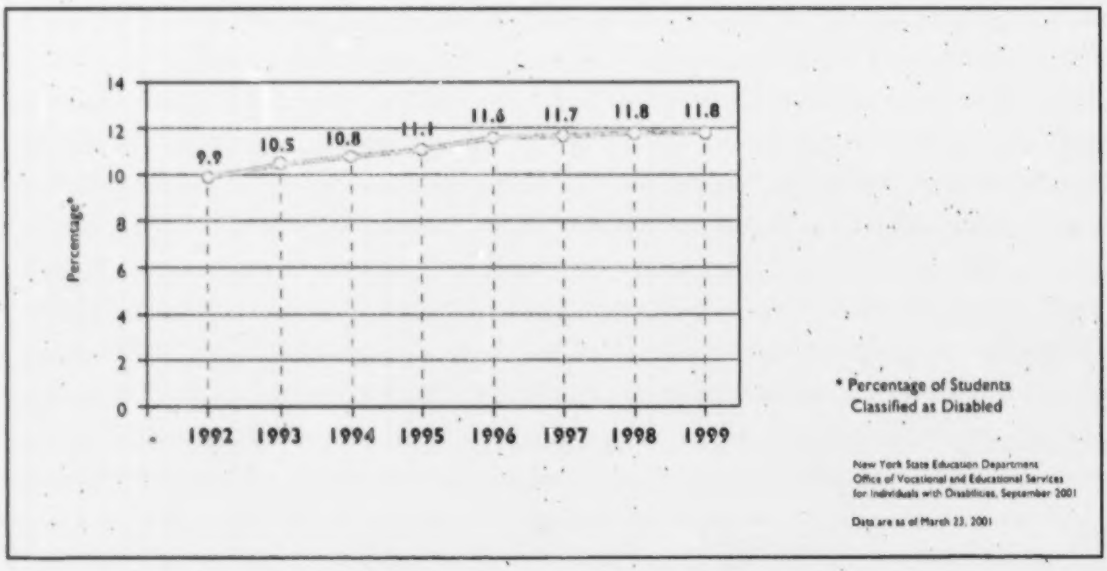
Accountability Should Be for Performance

The statute needs to be reviewed carefully to determine which of the currently required process accountability measurements are not educationally necessary. There is much room for consolidation of process accountability measurements in the planning and reporting requirements for both state education agencies and local education agencies. The monitoring and oversight of program delivery from both the federal and state levels should focus on the mechanisms for improving outcomes for students, rather than devoting such extensive time and resources to the less significant but extremely numerous process requirements.

Funding

I leave to last the issue of funding, since the debates about it are already so prominent. Whether the full funding of IDEA occurs this year or in the next several years, it needs to occur. Special education has become an expensive proposition for many reasons, some of which I described above. When full funding does occur, there needs

CHART 7 • CLASSIFICATION RATES FOR SCHOOL-AGE STUDENTS WITH DISABILITIES IN NEW YORK STATE



to be a recognition that state education agencies need adequate funding available to provide oversight, resolve disputes, develop programs, and provide technical assistance. The current cap on state access to IDEA funds for these purposes is counterproductive, given the complexity of the law and the resulting demands on states.

There also needs to be a comprehensive effort to establish adequate support services in general education. Again, using New York State as an example, the state legislature has, over the past several years, substantially increased funding for prevention and support services in general education aimed at reducing unnecessary referrals to special education. As a result of this effort, the classification rate in New York State has stabilized for the first time in decades.

Only when these supports become systemically available in general education will we begin to be successful in reducing the proportion of students unnecessarily referred to special education, particularly those who reside in poorer school districts.

CONCLUSION

In conclusion, the IDEA, as reauthorized over the past 25 years, has become an exceedingly complicated law, with recent educationally oriented requirements layered on top of civil rights and procedural requirements. The result is an excessively complex set of requirements—some which have proven essential to ensuring that students with disabilities receive an appropriate education, and some which have distracted human and fiscal resources from the task of educating children. The next reauthorization needs to move this statute in the direction of a streamlined, more focused set of provisions that allow both families and schools to place primary emphasis on educational achievement and developmental growth. Congress needs to target more resources, not necessarily through IDEA, for systemic prevention and early intervention and support services in the general education system. The reauthorization timetable needs to be lengthened to allow more time for implementation of any new requirements. Every incentive should be established to support the recruitment and retention of qualified personnel and creativity and innovation in the instructional process.

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In the end, students with disabilities will need to learn the same information contained in the general education curriculum as any other student would. We need to prepare these students not for menial jobs, but for opportunities to participate fully in society and pursue meaningful careers, postsecondary education, and as high a quality of life as possible. We must use this reauthorization opportunity to simplify and restructure the IDEA in such a way that it will *facilitate* the achievement of these goals for individuals with disabilities rather than reduce the likelihood of successful outcomes.

SUMMARY OF PAPER BY MARGARET J. MCLAUGHLIN

The upcoming reauthorization of the Individuals with Disabilities Education Act (IDEA) will likely be what some might call "bruising." Early indicators point to increasing Congressional attention to and criticism of current special education policies and suggestions for a major overhaul of the legislation. The following three questions are central to the criticism and concerns and should be addressed during the upcoming reauthorization:

WHAT IS "SPECIAL" EDUCATION AND WHO SHOULD RECEIVE IT?

- Special education programs and practices represent a convergence of two social forces: the rights-based movement that sought equal protection and access to habilitation for individuals with disabilities, and society's beliefs about the importance of education as a tool for social and cultural stability.
- Special education eligibility for the vast majority of students is triggered by referrals from classroom teachers or parents due to low achievement and behavioral problems. Students are judged to have a "disability" when they have individual learning deficits that general education cannot address.
- Extreme variability exists in the definitions of many disabilities, as well as in the identification criteria.
- The greatest increases in identification rates are among those students with the most subjective and variable classifications, such as learning disabilities, emotional disturbance, and mild mental retardation.
- There are two broad options to rethinking special education eligibility:
  1) Maintain the entitlement to a free appropriate public education for students with disabilities but operationalize disability in a way that is reliable and irrefutable; or
  2) Provide a support system to any student who experiences significant educational failure judged against a common or accepted performance standard and who does not respond to intensive interventions in general education.

WHAT DOES THE ENTITLEMENT TO AN "APPROPRIATE" EDUCATION MEAN?

- "Free appropriate public education" (20 U.S.C. 1401(8)) means special education and related services that are provided at public expense, under public supervision, and according to an individualized education program (IEP).
- IEPs are the only written document of a child's needs and the kinds of services that are to be delivered by the education agency. The IEP is the legal manifestation of the core IDEA entitlement.
- State and federal courts have played a significant role in defining what constitutes an "appropriate" education, but most analysts agree that a child's education is deemed appropriate if he or she is making progress based on the IEP team's judgment of the child's capabilities; there is no requirement to maximize potential or to move toward any performance standard.
- The operational definition of a free appropriate public education should be specified in the statute in terms of a child's progress toward a set of standards that have been developed by the district or state and put forth explicitly for students receiving special education. The standards need not be limited to the standards imposed for general education.

SUMMARY (CONTINUED)

WHAT IS THE APPROPRIATE FEDERAL ROLE IN SPECIAL EDUCATION?

- Federal special education policy should:
  1) Guarantee the core civil rights entitlements;
  2) Respond to variation of educational contexts; and
  3) Complement general education policy.
- Basic protections can be maintained without excessive federal regulations regarding timelines and other procedures.
- Flexible incentive systems and transparency in the system with regard to performance against standards is preferable to command-and-control regulation.
- The federal government should maintain a role in financing special education. But this role should include appropriate accountability for student performance, while allowing for greater flexibility in how resources are combined or leveraged in school improvement initiatives, such as schoolwide Title 1 programs. The funding formula should reflect the differential costs associated with the provision of some specialized services.
- The federal government should monitor state and local special education standards, goals, and key performance indicators for students, programs, and services, and should revise or eliminate current regulatory procedures to permit state flexibility.

Issues for Consideration in the Reauthorization of Part B of the Individuals with Disabilities Education Act

MARGARET J. MCLAUGHLIN

The IDEA has become systematically dysfunctional and damaging to the public schools.
(Clint Bolick, *Education Week*, September 5, 2001)

The upcoming reauthorization of the Individuals with Disabilities Education Act (IDEA) shows promise of being what some might call "bruising." Early indicators point to increasing Congressional attention to and criticism of current special education policies. Both the Senate and House bills reauthorizing the Elementary and Secondary Education Act (ESEA) contain provisions to amend IDEA, specifically to subject students with disabilities to the same disciplinary procedures of suspension and expulsion as non-disabled students. Another amendment would provide for full funding of IDEA[1] but with the opportunity for local school districts to use substantial amounts of this federal aid for purposes outside of special education. These amendments signal that policymakers are interested in making significant changes to the federal special education legislation. The last IDEA reauthorization, which extended over three years and two Congresses and in 1997 resulted in P.L. 105–17, foreshadowed some of the major issues that will again surface, including discipline.

Several new provisions were added during the last reauthorization of Part B[2] of IDEA to align federal special education legislation with the federal Title I program for low-achieving children and with standards-based reforms being implemented by the states. Of particular note were provisions to promote accountability for student performance in special education. Although there were a number of changes to Part B of IDEA, most of the debate during that last reauthorization occurred around changes that challenged the basic civil rights protections offered by IDEA, specifically to the law's guarantee of a free appropriate public education.[3] Many of the changes made tinkered with reform and did not put forth any new conceptions regarding the purposes of special education, the entitlements, or the eligible participants in the program. Yet, it is these issues that are central to the criticism and concern now emerging.

The upcoming reauthorization likely will be accompanied by a level of discussion and debate not seen since the passage of P.L. 94-142, a landmark 1975 law that was also known as the Education for All Handicapped Children Act and that greatly expanded educational opportunities for children with disabilities. While some view the current increased interest in and scrutiny of special education policy as a threat, the reauthorization of IDEA can also be an opportunity for thoughtful and meaningful reform. Instead of a reactive and defensive posture, the reauthorization should prompt reexamination of the fundamental goals of the federal special education legislation. To date, most of the changes that have been made to the federal special education legislation have been made in relative isolation of how special education "fits" within the larger enterprise of education. Obviously, there is a need to craft changes that are acceptable to multiple constituencies and interests.

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However, in the absence of a more cohesive policy framework, the changes are at risk of becoming so many random acts of improvement that result in a fragmented and burdensome law.

> Educational alternatives, including "special" classes, emerged as a way to accommodate children from the lower social strata who were also experiencing persistent educational failure.

Key Questions for The Reauthorization

In this paper I argue that it is time to consider the basic assumptions underlying the federal special education legislation, recognizing that time and experience have pointed us to ideas and strategies that were never achievable or may no longer be productive. I further argue that in order for policy actors to engage in reform conversations, they should have some understanding, if not agreement, about these assumptions. To begin this discussion, I pose the following key questions that I believe encompass the major issues of reauthorization:

Question 1: What is "special" education and who should receive it?

Question 2: What does the entitlement to an "appropriate" education mean?

Questions 3: What is the appropriate federal role in special education?

In the rest of this paper, I provide a context and recommendations for considering each of the questions.

WHAT IS "SPECIAL" EDUCATION AND WHO SHOULD RECEIVE IT?

Federal special education policy as articulated in IDEA is a hybrid of civil rights and education statutes. The law guarantees the right to a "free appropriate public education" to students between the ages of 3 and 21 who have been evaluated in accordance with the law as having one of 13 categories of disabilities, and who by reason thereof need special education and related services. IDEA requires that children and youth must be "classified" as having a disability in order to access specialized interventions and supplemental resources directed at their learning and/or behavioral difficulties. At state discretion, children ages 3 through 9 who are experiencing developmental delays defined by the state may also be eligible for special education and related services (34 CFR 300.7). During the 1998-99 school year, 6.2 million public school students ages 3 through 21 received special education services under Part B of IDEA. This represents a 35% increase in the period between 1987-88 and 1998-99. Furthermore, 46% of all school-age students receiving special education spend less than 20% of their instructional time outside of general education classrooms (U.S. Department of Education, 2000).

Federal law and accompanying regulations prescribe a number of procedures for determining the extent and nature of the special education provided to individual students, and also set criteria for determining what constitutes a disability. Federal law requires that individual states develop regulations and procedures in a number of areas, including how the state will operationalize the disability categories. The resulting federal and state definitions and procedures for determining disability have evolved over the past century in response to experience with students with learning and emotional and behavioral difficulties in the schools.

The definitions also reflect historical conceptions of individual differences. Federal and state statutes and rules use classification as a means for controlling the allocation of resources and for assuring that the legal protections and entitlements are targeted at the members of a protected class. The classification of students as disabled and eligible to receive special education and related services has generated much controversy and debate over the

years. Among these controversies are the long-standing issue of disproportionate representation of certain racial and ethnic populations and males in special education, and the burgeoning number of students classified as Specific Learning Disabled, one of the federal categories of disability.

History of Difficulties Defining "Disability"

Prior to the passage of the 1975 federal special education legislation, a number of states had compulsory attendance laws that explicitly excluded certain students from public school (Ballard, Ramirez, & Weintraub, 1982). All states had *some* special education programs in place, but only seven states were estimated to be serving more than 50% of their eligible students (Weintraub, Abeson, & Braddock, 1971). There was a great deal of variation among states in terms of diagnostic categories and processes used to determine whether and how a student would be considered eligible for special education. This variability existed across definitions of both sensory and physical disabilities, as well as cognitive, emotional, and behavioral disabilities.

Goldstein, Arkell, Ashcroft, Hurley, and Lilly (1975) cited a 1970 survey of the 50 special education directors across the U.S. indicating that 56% considered labeling of students and the problem of placement related to labeling to be "the major controversy in special education today" (p. 11). A key theme evident in the pre-1975 definitions was that a student's observed learning or behavior was benchmarked to unspecified local achievement and behavioral norms. Students were placed in special education or excluded from public school if their rate and level of learning deviated too far from the norms of the school and/or if their behavior and physical development negatively affected their learning (Goldstein et al., 1975).

In passing federal special education legislation, Congress resolved the issue of exclusion by creating an entitlement to a free appropriate public education for each student with a disability. The legislation did not, however, resolve issues surrounding which students would be eligible to receive special education services. The definitions, criteria, and identification procedures codified in the 1975 Act were designed to address both those students who were being *systematically excluded* from public school and those who were being *inadequately educated* within public education. First priority under the law was given to those students who were not receiving an education, typically those students with the most severe disabilities, followed by those who were not being "adequately" educated.

From the outset, policymakers and state educational administrators were concerned that the eligibility criteria could be manipulated to make huge numbers of students eligible to receive special education, a situation that could overwhelm their budgets (Levine & Wexler, 1981). With pressure from state education commissioners, Congress imposed a 12% limitation on the proportion of school-age students who could be considered eligible for federal special education funds, out of concern that school districts would try to over-identify students in order to receive federal funds (Levine & Wexler, 1981).[4]

The fact that it was considered possible to inflate the numbers of eligible students in certain categories of students is indicative of the difficulties inherent in defining "disability" and, by extension, determining which students are entitled to a free appropriate public education. Viewing academic deficits solely as a phenomenon occurring within an individual child perpetuates a century of thought that educational differences are derived from qualitative differences inherent in the child, rather than from a failure of basic education. Yet, from the beginning of public special education programs, the notion of qualitative differences has been challenged. In fact, with few exceptions, the earliest school programs were not for children with clearly medically-diagnosed conditions or disabilities that interfered with their education, but for students who were "different" because they learned more slowly or less well than their peers.

Special Education As an Extension of "General" Education

Special education programs and practices represent a convergence of two social forces. One is the rights-based movement that sought equal protection and access to habilitation for individuals with disabilities who were institutionalized, segregated from society, and neglected. The other force was a response to society's beliefs about the importance of education as a social tool.

Educational thought and practice during the 1900s was dominated by an ideology of social reform that viewed schooling as the central remedy for inequality of social and economic opportunity (Cohen, 1970). This view asserts that adults' social and economic success is determined by standards similar to those used to evaluate school performance: intelligence and achievement, order, discipline, and respect for authority. Education was considered essential, particularly in the early part of the century, to prevent social problems and promote a level of economic independence. This view of schooling has been differentially effective for different groups of students.

Cohen (1970) reviewed a number of surveys conducted in the early part of the 1900s in several large cities that compared various immigrant and native white student populations on variables such as IQ, grade retention, graduation, and academic achievement. In general, the studies indicated that many immigrant students, notably central and southern non-Jewish Europeans, experienced severe difficulties in school, including high retention and dropout rates. Education of immigrant children was considered essential to maintain social stability and promote economic independence, and this gave impetus to the growth of common schools. But the arrival of immigrant students in public schools also coincided with the development of alternative education programs, the emergence of IQ and achievement testing, the rise of vocational education, and efforts to diversify curriculum. Educational alternatives, including "special" classes, emerged as a way to accommodate children from the lower social strata who were also experiencing persistent educational failure.

Case histories documenting the development of specialized classrooms and programs in public schools during the past century point to the use of special education and the categorization of students as "disabled" as a means of coping with increasing student diversity (Franklin, 1994; Hendrick & MacMillan, 1989a; 1989b). Hendrick and MacMillan (1989a; 1989b) studied the development of special education programs for students with mental retardation during the early 1900s in the Los Angeles and New York public schools. They note the increased use of grading and grouping students as a response to a heterogeneous student population brought about by the influx of immigrants and the migration of rural African-American populations to urban centers. Special education classes were developed to provide an alternative (e.g., vocational and daily living) curriculum to students who were determined to have a low IQ and low academic performance. Franklin notes that in the early part of the twentieth century, classes for the "backward" students were created in several large cites in large part to reduce the problems brought by children who were repeatedly retained in grade for failing to progress in the curriculum.

The fact that many of the students in these early classrooms were immigrants, minorities, and poor children did not deter the programs from growing. The justification was grounded in concerns about humane treatment and social prudence. The humanitarian movement promoted the importance of habilitation and treatment. However, as Hendrick and MacMillan (1989b) point out, there was also a fear that if these diverse low-achieving students were not provided with some education, they would grow up with "antisocial tendencies" (p. 395).

Franklin (1994) and Goldstein et al. (1975) both note that at the midpoint of the twentieth century, the problems of these "slower" children were "medicalized" and that a failure to learn at a rate commensurate with one's peers became increasing-

ly defined as a disability, specifically if the underachievement was significant and/or unanticipated. Goldstein et al. (1975) identified a number of factors that they believe have directly or indirectly led to the development of classification systems and practices in special education. Among these are a preoccupation of physicians and medical professionals with identifying biological factors related to observable differences in children; changes from a predominantly agricultural economy to a technological one, resulting in greater skill demands and occupational hierarchies that exacerbated class distinctions and produced more stratification of knowledge and skill; and the growth in compulsory education laws that made education more egalitarian than elitist and created a distinct institution with its own norms, roles, and expectations for what would be tolerated or accepted. The latter resulted in norms or benchmarks against which individual differences could be observed, measured, and quantified.

Throughout the twentieth century, individual differences among lower-achieving children became increasingly defined as defects or disabilities and were codified in various classification systems that assumed certain medical or psychological etiologies. For those with below average IQs, terms such as "educable mentally retarded" were used. In the late 1960s, a new term, "learning disabled," was proposed to categorize those students who had unexpected difficulty learning basic academic content. An unexpected difficulty came to mean that the child in question had at least an average IQ but was still having trouble learning. The classification or label became the critical element for defining what happened to the student, where he or she was educated, and what type of education he or she received. Further, the classification became the students' permit to enter special education.

Even before the 1975 federal special education legislation was enacted, lawsuits in several states had challenged the use of IQ testing and other procedures that discriminated against certain racial and ethnic groups and resulted in disproportionate numbers of African-American students and English language learners being referred to special education. Despite comprehensive regulations regarding protections in assessment and evaluations, as well as changes in the defining criteria for the category of Mental Retardation, disproportionate numbers of certain racial and ethnic groups continue to be identified for special education (see Heller, Holtzman, & Messick, 1982; Reschly, 2000).

Defining "Specific Learning Disabled"

Perhaps the most contentious—and the most investigated—category of disability is that of "learning disabilities." Space does not permit a thorough review of this category. This term came into use prior to the passage of the 1975 legislation, but even before the term existed, schools had long been aware of the particular group of students it described. The underlying construct of learning disability was that a child had difficulty learning due to some underlying and presumed difficulties in processing information that could not be explained by a low IQ or lack of opportunity. Yet, despite extensive research, there are longstanding difficulties in sorting low achievers according to whether they have lacked adequate instruction or other opportunities or have some "internal" processing difficulty.

During the past decade, the number of children classified as having Learning Disabilities has increased by almost 38%. Currently, over half of all children in the U.S. who receive special education (about 5.2% of the school-age population) are categorized as having a learning disability (U.S. Department of Education, 2000). Recent challenges to the learning disability construct do not deny that individual children may have particular difficulty learning specific content (see for example, Lyon, Fletcher, Shaywitz, Shaywitz, Torgeson, Wood, Shulte, & Olson, 2001). However, the solution is not to simply refer them "out" of general education but to look at enhancing the quality of instruction, including a major focus on establishing early competency in reading and math.

Current Policies Regarding Who Receives Special Education

Current special education policy remains firmly grounded in the early traditions and beliefs about individual difference. The policies are premised on the notion that children who require special education are somehow uniquely different from "typical" students due to a deviance or disability within the child. Access to education means providing "differentiated" education opportunities, such as different curriculum, instruction, classes or schools. Both extra resources and legal entitlements are targeted to students based on their designation as having a disability as defined by IDEA.

Still, for more than half of the school-age students currently being served in special education, referrals from classroom teachers or parents are the primary mechanism for triggering eligibility, and professional judgment or family advocacy becomes the critical variable in determining access to or denial of appropriate services. However, extreme variability exists within all the factors that affect classification and placement, including the definitions of disabilities, operational criteria for classification, assessment procedures, fiscal influences, administrative decisions, and quality of instruction (Reschly, 2000). Factors such as school personnel's expectations and stereotypes of culturally diverse youth, teacher-parent relationships, school-community relationships, and children's own expectations of themselves and what they can achieve seem to be equally influential and contribute to the complexity of determining who is eligible to receive special education.

Changes are needed in the procedures for defining who is eligible for special education. Simply adding more criteria will not suffice and will only increase the already onerous assessment and evaluation procedures. To confront the issue of eligibility requires a clear understanding of the purpose of special education in relation to general education. To this end, the following two options are suggested for consideration during reauthorization.

Options for Rethinking Special Education Eligibility

In my view, there are two broad options to consider in rethinking special education eligibility. The first is to maintain the entitlement to a free appropriate public education for students *with disabilities* and to operationalize disability in a way that is reliable and irrefutable. The second option requires us to view special education as part of a continuum of an educational system that provides a variety of supports tailored to match educational opportunities with individual needs.

Neither of the two options is totally satisfactory. The first option is not achievable because individual differences and their impact on learning exist along a continuum. There will always be a problem about where to draw the line defining "disabled" using a universal "cut point."

The second option seeks a broader and more systemic approach that *1) provides special education and related services for any child who enters school with a clearly defined developmental disability, most notably those with more moderate to significant cognitive disabilities as well as those with medically-defined disabilities; and 2) provides a support system to any student who experiences significant educational failure judged against a common or accepted performance standard and who fails to respond to intensive interventions in general education.*

General education interventions would be required that go beyond current episodic pre-referral interventions and could include early literacy programs as well as school-based behavioral support systems. However, when a student fails to make adequate progress, as judged against an established state or district standard, with the intensive general education interventions, he or she would be referred for more in-depth educational assessments and provided with specialized services and supports. These services should be available within the public school building or district and could require an individualized education program (IEP). But the supports would be available based on severity of educational need and lack of response to interventions. The

focus of these new approaches would be equity in access to services, with fewer false negatives and false positives in referral and eligibility for special education. Further, there would be more direct, and hence more valid, educational decisions.

There are, however, some significant tradeoffs in the second option. This approach to identification begins to shift the special education program for some students to more of a compensatory model. However, as Reschly (2000) points out, the vast majority of students receiving special education are in the categories of Learning Disabled, Emotionally Disturbed, Mild Mental Retardation, and Speech and Language, which are dependent on educators' professional judgment. For the most part, students end up being identified for special education due to low achievement and behavioral problems. They are judged to have a "disability" when they have individual learning deficits that general education cannot address or chooses not to address.

Special education must either acknowledge that these students do not have "disabilities" and are therefore not eligible for any services, or it must accept that they can be appropriately supported within a more flexible and accountable general/special educational system. This will require recognition that the assumptions about inherent deficits and etiologies are costly, inequitable, and educationally indefensible.

As noted earlier, special education evolved into a system of alternative curricula, settings, and instructional approaches designed to meet the educational needs of a range of students who experienced severe learning deficits and behavioral deviance, only a minority of whom had clearly medically-defined disabilities. Over the years, "special education" has moved closer and closer to general education. The majority of the students who receive special education do so within the general education classroom and curriculum. New IDEA requirements call for the participation of these students in new educational assessments and accountability systems. Contemporary contexts of schooling, as well as a quarter century of experience with special education, offer a new way to consider who is eligible to receive special education services and to expand what we mean by "special" education.

WHAT DOES THE ENTITLEMENT TO AN "APPROPRIATE" EDUCATION REALLY MEAN?

> *"...the public mandate that all handicapped children are entitled to an education appropriate to their unique needs is undoubtedly the most significant [among all policy developments]. This had been a goal long dreamed of and often seriously discussed respecting the education of all American children, but a goal that has seldom been implemented on any notable scale."*
> (Ballard, Ramirez, & Weintraub, 1982, p. 20).

The cornerstone of federal special education law is the individual student's entitlement to a "free appropriate public education" (20 U.S.C. 1401(8)). As defined through regulation, this term means special education and related services that are provided at public expense, under public supervision, and according to an IEP. By law, each child's IEP must include a written statement of the child's present level of performance, a statement of annual goals and short-term objectives and benchmarks, a statement of all special education and related services that will be provided and the extent to which the child will participate in general education, and schedules for annual review.

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At the time of passage of P.L. 94-142, Congress clearly indicated that the requirement for individualized programs was essential to achieving the ambitious goals of the legislation (Ballard & Zettel, 1977; Levine & Wexler, 1981). Neither the terminology nor the concept of an IEP was a new idea in 1975. A number of state statutes and judicial decrees already required education of children with disabilities to be "appropriate" or "suitable" and to include "specialized instruction" (Ballard, Ramirez, & Weintraub, 1982, p. 20). Several states actually required the development of educational plans in their special education statutes.

Interest groups lobbied strenuously for the IEP provisions in the initial legislation, under the belief that a formal written document was necessary to ensure that a state or local agency was indeed providing what was appropriate for an individual child. Because IEPs are the only written document of a child's needs and the kinds of services that are to be delivered by the education agency, the IEP became the legal manifestation of the core federal entitlement.

> The IEP itself quickly morphed into a monumentally bureaucratic and time-consuming endeavor

In the debates over drafting regulations pertaining to the IEP, child advocates pushed for making the document mandatory, binding, and subject to specific timelines. State and local district representatives wanted the documents to be planning grids, out of fear that the IEPs would increase litigation and that educational agencies would not have the resources to provide all the services deemed necessary, hence "appropriate," for a child with a disability (Levine & Wexler, 1981).

Those arguing for the mandate prevailed in part because the IEP development was to be a team process involving parents and local school representatives, who presumably would not agree to something the schools could not provide. Also, while the district would be responsible for providing the services, it was not legally responsible for failure in performance of a child with a disability (Levine & Wexler, 1981). So began the struggle to legally define what constitutes an "appropriate" education. The IEP itself quickly morphed into a monumentally bureaucratic and time-consuming endeavor (U.S. Department of Education, 1982; SRI, 1981). And the problem of defining "appropriate" in terms of how the IEP was developed became even more significant.

Legal Interpretations of "Appropriate"

State and federal courts have played a significant role in defining what constitutes an appropriate education. In *Board of Education of Hendrick Hudson Central School District v. Rowley* (458 US 176, 1982), the Supreme Court held that in order to be appropriate, the special education and related services provided to a child with a disability must be designed in conformity with mandated procedures and timelines and must be reasonably calculated to confer educational benefit. Lower courts, in applying the Rowley standard, have had no difficulty in judging the procedural integrity but tend to defer to educators' opinions about what constitutes a beneficial education (McDonnell, McLaughlin, & Morison, 1997). School districts have generally prevailed in disputes over appropriateness if they can demonstrate that they followed all procedures and made an earnest attempt to provide services.

Analyses of applications of the Rowley standard disagree as to whether the standard is being interpreted in a consistent way. But most analysts agree that a child's education is deemed appropriate if he or she is making progress based on some judgment of their capabilities and that there is no requirement to maximize potential or move toward any performance standard (McDonnell et al., 1997; Smith & Brownell, 1995).

The Inevitable Conflict Between "Appropriate" and "Individualized"

The essence of current policy is that "appropriate" must be considered in relation to an individual child. Thus, appropriate is always subjective and

open to dispute. When is some benefit "reasonable?" When is enough really enough? Under what circumstances can we say with confidence that a child has received a sufficient quality and quantity of special education services? The drafters of the legislation believed that requiring a team, including a child's parents, to make decisions about what is appropriate would maximize, if not guarantee, the appropriateness of a program.

Understandably, advocates pushed for individualization as a way to avoid the real danger of children with disabilities sitting forgotten in the back of regular classrooms or placed in special education classes with cookie cutter curriculum and instruction. Further, they pushed for the IEP as a means of holding schools accountable for providing individualized services to students. Arguably, the concept has worked reasonably well for students with more severe disabilities. But the IEP has also created enormous bureaucratic inefficiencies. Moreover, research has clearly demonstrated that IEPs are often instructionally irrelevant, only marginally individualized, and only effective as accountability tools when parents exercise their right to disagree (Giangreco, Dennis, Edelman, & Cloninger, 1994; Smith, 1990; Smith & Brownell, 1995). The IEP process becomes one of political bargaining between parents and professionals, and *"the collective result is considerable momentum against the level of individualization intended by federal law"* (McDonnell et al., 1997, p. 64).

Beyond the IEP process itself is the dilemma of defining appropriate in the absence of some standard. Even when standards exist, however, a question arises as to what individualization means in relation to these standards. This question was addressed in a report of the National Research Council (McDonnell et al., 1997), which concluded that standards and the education of students with disabilities "embody potentially compatible goals" (p. 64). The report also acknowledged that the concept of common content and performance standards could be troublesome, given the heterogeneity of the special education population. Nonetheless, the legal entitlement to "appropriate" must be explicitly defined in terms of specific standards.

A Need to Define an "Appropriate" Education

In order for us to meet the true intent of what constitutes an "appropriate" education for any given student with a disability, we must be able to have a measure against which to compare a student's progress and judge the adequacy of his or her education. In the *Rowley* decision, the Court made the following statement about assessing appropriateness (458 U.S. at 188-89):

> Almost as a checklist for adequacy under the Act, the definition requires that such [specially designed] instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP...Thus if personalized instruction is being provided with sufficient support services to permit the child to benefit from instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate education" as defined by the Act.

The idea of "benefit from instruction" is ambiguous, as is the notion of a "definitional checklist." One can see how disputes could occur over the appropriateness of any child's IEP.

Recent broad changes in federal and state educational policies require a rethinking of how special education fits within the larger system of education. The current educational reform ideology is less concerned with bureaucratic conventions and adherence to rigid rules and procedures and is more focused on achieving specific levels of student performance. Public educational policy is shifting from concerns solely about equal access to education to ensuring equal access to an *adequate* education, defined in terms of educational attainments or outcomes.

In this environment, accountability for student performance and outcomes takes precedence over

rules, and flexibility and local adaptation are permitted if not expected. The 1994 ESEA amendments, most notably the Title I program, clearly illustrate the major elements of the new policy. These include explicit content and performance standards, assessments that are aligned with the standards, and rigorous accountability for student results. The 1997 IDEA amendments contain several new provisions designed to align federal special education policy with the broader educational context. Most notably, requirements for children with disabilities to participate in assessments and have greater access to the general education curriculum are beginning to formally move special education closer to the broader education standards. However, these requirements were grafted onto the basic federal policy architecture of special education, and if they are to work as intended, a more explicit link to standards is required.

The operational definition of a free appropriate public education should explicitly recognize the concept of an adequate education, defined in terms of children's progress toward a set of district or state standards. These standards need not be limited to the standards imposed for general education. I would argue that the state has an obligation to explicitly put forth standards for students receiving special education. The IEP process should be directed at moving children toward clear, coherent standards reflecting desired long-term outcomes.

The practical issue of what is meant by "standards" in the context of an individualized education cannot be ignored. Whether it is sufficient or even wise to endorse one *common* set of performance standards is open to discussion and will not be addressed directly in this paper. Perhaps it is more instructive to consider individualization of *special education and related services* in connection with ensuring a student's progress toward an established standard.

Currently, in states and school districts across the country, IEP forms and procedures are being revised to align them with content and performance standards. Yet, my own research and experience in this area indicate that much of the alignment is ad hoc, occurring within each IEP team, and can often result in resistance, confusion, and fragmented goals.

Current IDEA Policies and Standards

Currently, IDEA requires that students with disabilities participate in large-scale state and local assessments. Title I accountability provisions also require states to include assessment scores of students with disabilities when states determine whether schools are making "adequate yearly progress"[5] in moving students toward performance standards. Thus, one set of standards is imposed through the state assessment programs. Another area where standards could and should be defined is through the new provisions in IDEA that require states to develop performance goals and indicators in special education and to report biennially on their progress toward these goals (34 CFR 300.137). Not surprisingly, a review of these first biennial reports indicates wide variation in state performance goals and even more variation in the indicators used to monitor progress (Ahearn, 2001).

The reauthorization of IDEA should build upon the requirements to create performance goals and indicators and should specifically clarify the relationship of these goals and indicators to broader state standards. IDEA needs to present a coherent and cohesive approach to special education accountability that is based on a set of clear performance goals and indicators that will be expressed in state reporting requirements and state oversight of local districts. These goals and indicators in essence would define special education standards and would provide a uniform accountability mechanism and set of benchmarks against which "appropriate" could begin to be defined. Such a system of standards will also be essential in any reconsideration of the federal role in special education.

WHAT IS THE APPROPRIATE FEDERAL ROLE IN SPECIAL EDUCATION?

This final question is certainly not new or unique to federal special education policy. A perennial tension exists among federal and state governments in the area of education policy. Federal special education law and regulations are considered to be overly prescriptive and increasingly "out of step" with new ideas about federal regulation and oversight. Within the current dominant model of educational reform, as articulated in federal and state education policies, standards and accountability are centralized at the state level, while decisions about procedures and practices are deregulated or permitted to be adapted to local contexts.

The preoccupation of special education with process accountability and monitoring has resulted in enormous paperwork burdens, as schools struggle to document and record every action, timeline, and decision. The IEP has become the central contract between a student and the school, and it is not unusual for these documents to expand to 15 or 20 pages of assurances and documentation of procedures. While there is some hope that the current focus on accountability for student outcomes will replace the emphasis on process, it is important to acknowledge that the procedures represent important legal assurances of individual rights.

Within the general outcry over excessive paperwork and regulation, federal policymakers have argued that the solution to regulatory burden rests with states and local districts, which have piled on their own procedures and requirements beyond what is required by the federal rules. While this is certainly true, it is also the case that the additional procedures were frequently created in response to federal judicial interpretations of IDEA rules and regulations or to federal monitoring and oversight of state implementation of federal regulations.

I believe that it is time to reconsider the appropriate role for the federal government in special education. Specifically, we need to address the degree to which the current regulations and federal-level prescription are either useful or necessary. Sunstein (1990) discusses several reasons why regulations fail. These include failures in the original statute, lack of coordination and effective management, absence of accountability, and influence of factional power and self-interests. Each of these has probably contributed to problems in the implementation of federal special education policy, and the perceived lack of adequate regulation has resulted in more regulation.

With respect to problems in the statute, Sunstein cites two major ones: the insensitivity of most federal rights-based policies to regional variations, and the belief that costs or a sheer lack of technical capacity to accomplish the promise of the statute cannot mitigate individual rights. In other words, a uniform standard of behavior cannot be legislated in places that differ dramatically in their capacity, nor can any regulatory program ignore costs. In addition, ambiguity in the federal statute, such as the previously discussed provision for free appropriate public education, creates even more variability and further erodes implementation of a uniform standard.

Sunstein argues in favor of legislation that reduces risks (or presumably increases benefits) as opposed to imposing some absolute standards. Regulations fail if they do not yield real-world results or protections for individuals. Lack of good-faith implementation, resources, or methodology contributes to the failure to implement IDEA regulations. But federal special education policies have also been driven by special interests. Groups representing various disabilities or constituencies have attempted to access the entitlement or impose their vision of education onto the federal regulations.

Parents and advocates criticize enforcement of the federal regulations, saying that neither the federal government nor states are meeting their responsibility to enforce compliance and ensure implementation of the statute. Parents perceive that they must bear the brunt of ensuring that all

procedures are met (NCD, 2000). However, attempts to increase controls over processes and establish more uniform interpretation of regulations have resulted in litigation and more regulation. This, in turn, has increased inefficiencies and costs. We now have seen what Sunstein calls "skewed redistribution" (1990, p. 100). That is, while IDEA was intended to produce some redistribution of educational resources to benefit students with disabilities, the measures unequally benefit some students and may actually harm others, both with and without disabilities.

How Can We Rethink the Federal Role?

The question of what precisely can be done to reframe the federal role will require deliberate legal analyses and conversations. A substantial reduction in the federal presence in special education is likely to be achieved only incrementally. However, I believe that a significant effort needs to be put forth in redefining a federal special education program that: 1) responds to the basic core civil rights entitlements embodied in the legislation; 2) reflects both the realities and variation of current educational contexts, as well as knowledge and experience gained through more than 25 years of implementation; and 3) is not simply reacting to individual problems or demands and general educational reforms but provides a comprehensive and complementary policy structure.

While IDEA was intended to produce some redistribution of educational resources to benefit students with disabilities, the measures unequally benefit some students and may actually harm others, both with and without disabilities.

What would such a framework look like? First, the core civil rights principles must unquestionably be maintained in federal statute. These include the "zero reject" provisions, the guarantees for a free appropriate public education (albeit revised as I propose), and the concept of educating students with disabilities in the "least restrictive environment." The basic due process provisions should also remain essential, as should certain other key legal protections such as the non-discriminatory assessment provisions. However, those basic protections can be maintained without the excessive federal regulations regarding timelines and other procedures.

Second, the federal government should maintain a role in financing special education. With *appropriate accountability for student performance*, the finance provisions should expand on the 1997 IDEA amendments to provide greater flexibility in how resources are combined or leveraged in overall school improvement initiatives, such as schoolwide Title 1 programs. In addition, the funding formula should reflect the differential costs associated with the provision of some services, such as full-time nursing and other "extraordinary" costs. However, any adjustments to the finance formula must be placement-neutral and not provide incentives for moving students with disabilities out of public school classrooms or environments.

Beyond guaranteeing certain fundamental civil rights and fiscal support, what is the responsibility of the federal government? If we assume, for example, that the federal government requires and monitors state-level standards and performance indicators for special education students, programs, and services, would it be necessary to have comprehensive IEP regulations? Could states and local school districts adopt their own concepts of an IEP? Similarly, the numbing regulations associated with the discipline of students in special education could be reconsidered or eliminated in favor of more precise accountability for student suspensions and expulsions. Definitions and operational criteria for determining eligibility could be streamlined even if the new construct of special education as proposed in this paper were not adopted. The numerous requirements regarding state reporting could also be dramatically altered if there were standards and *valid* indicators of effective special education. In other words, given a new framework for thinking about special education programs and services,

IDEA and accompanying regulations could provide the broad policy structure and framework for defining special education.

Conditions for Achieving a New Federal Role in Special Education

The structure I propose is based on clearly articulated standards for programs and students and on measurable indicators that either currently exist or are acknowledged as critical signals of program integrity. Performance targets or benchmarks for the standards need to be established, most likely on a state by state basis, and individual student progress on the IEP needs to be referenced to these standards. Ideally, the system would be vertically aligned from local to state to federal levels. As confidence in the indicators increases, concerns about procedures and strict adherence to regulation become less important than discovering reasons for low performance and ways to improve practice.

Flexible incentive systems and transparency in the system with regard to performance against standards is preferable to command-and-control regulation. The regulations should focus on increasing educational benefits to individual students and reducing social risks, such as isolation, but they should not attempt to define an absolute guarantee of what the student will get. In other words, the right to a free appropriate public education is not a guarantee to a certain outcome or level of benefit, nor should it be a guarantee to certain procedures or processes. The task for reauthorization is to develop some principles that can interpret the goals of current federal regulation, while remaining sensitive to constitutional protections. Thus, the answer is not simply to deregulate, but to deregulate within a carefully considered system of federal-to-state-to-local responsibility and control for special education.

SUMMARY

In this paper I have attempted to address what I perceive to be the three fundamental policy questions that need to be considered as we attempt to craft the next reauthorization of IDEA. As I note in the paper, I do not expect that changes of the scope that I propose will be enacted in a single reauthorization. Most major policy change is incremental. I do believe, however, that we cannot continue to tweak a provision here or there or move around the edges of reform. Such changes create more inefficiencies and further fragment special education policy. The result at the street level (Weatherley & Lipsky, 1977) is a set of conflicting priorities and demands that must be negotiated by individual teachers and families. This street-level adaptation is inherently inequitable and results in ad hoc policymaking.

> The numerous requirements regarding state reporting could also be dramatically altered if there were standards and valid indicators of effective special education.

During the past decade, special education professionals and policymakers have voiced support for greater unification of special and general education policies. They, along with parents and advocates, want better results for students with disabilities. If, as a field, we are truly serious about achieving these two goals, then we must also be serious about critically examining a policy structure that is almost three decades old. We simply cannot fix problems by adding more of the same or by rigidly adhering to the old.

ENDNOTES

1 In the 1975 legislation for special education, Congress authorized the federal government to eventually pay for 40% of the extra per pupil expenditures involved in educating children with disabilities. Appropriations have never reached this authorized level, and the bulk of the costs for providing special education has fallen on local school districts. The current federal share of special education costs is about 12%.

2 Part B of the federal law contains the provisions governing special education and related services for children and youth ages 3-21.

3 The major issue was whether students with disabilities receiving special education could be indefinitely suspended or expelled and have their special education services ceased. A compromise was crafted that retained the students' right to a free appropriate public education.

4 The cap was removed in the 1997 amendments, which changed the funding formula for appropriations above a certain trigger to a formula based on population rather than on counts of children with disabilities.

5 States are required to develop performance standards that define adequate yearly progress for individual schools and to hold schools accountable for reaching those standards. States must also intervene in schools that fail to make adequate progress.

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In 1990, Dr. Hehir became Associate Superintendent for the Chicago Public Schools, where he was responsible for special education services and student support services with a staff of 7,000 and a $365 million operating budget. In this role, he implemented major changes in the special education service delivery system, which enabled Chicago to reach significantly higher levels of compliance with IDEA, resulting in eventual removal of oversight by the U.S. Department of Education's Office of Civil Rights.

Dr. Hehir served in a variety of positions in the Boston Public Schools from 1978 to 1987, including that of Director of Special Education from 1983 to 1987. Prior to his employment in Boston, he served as special education resource teacher at Keefe Technical High School and as a program development consultant for the Massachusetts Department of Education.

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An advocate for children with disabilities in the education system, Dr. Hehir has published articles on such issues as special education in the reform movement, due process, and service to children in the least restrictive environment. He edited the book, *Special Education at the Century's End.* He also works at the Educational Development Center in Newton, Massachusetts, as a Distinguished Scholar working on a variety of projects involving school restructuring.

LAWRENCE C. GLOECKLER

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Mr. Gloeckler began his career in education as a teacher of students with mental retardation. He has also served as a Special Education Coordinator at the local level. He has taught special education at both the graduate and undergraduate levels at the College of Saint Rose in Albany, New York. He served for five years as a member of the Board of Directors of the National Association of State Directors of Special Education (NASDSE). He also served as chair of the Interagency Relations Committee of the Council of State Administrators of Vocational Rehabilitation. He has spoken throughout the country about issues regarding services to people with disabilities and about performance-based accountability in government. He served on the National Panel of Experts to develop standards for transition programs for the National Rehabilitation Accreditation Commission and co-authored the monograph, Transition from School to Work and Community Services.

In August 1998, Mr. Gloeckler's office received an award from the Council of State Governments for its exemplary State Management Program and was featured in Managing for Success: A Profile of State Government for the 21st Century. In November 1999, he received the Heritage Award, given by the NASDSE to a person who has made an outstanding contribution to the field of special education. He served as President of NASDSE from November 2000 to November 2001. He is currently serving as Past President of this organization. In March 2000 he was elected to the Board of Trustees of CARF: The Rehabilitation Accreditation Commission, an independent, international not-for-profit commission which serves as the standards-setting and accrediting body for rehabilitation and life enhancement programs and services for people with disabilities.

Mr. Gloeckler is a member of the Advisory Council to the National Center on Educational Outcomes, a member of the Technical Assistance Advisory Network to the National Center on Secondary Education and Transition at the University of Minnesota, and a Core State Policy Advisor to the Educational Policy Reform Research Institute at the University of Maryland. He also serves on the Professional Advisory Board to the National Center for Learning Disabilities and on the Critical Issues Committee for the State Departments of Education in Maryland and California.

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